charge of robbery was not pressed by counsel, but on the evidence we can see no ground for questioning the finding of the learned judicial commissioner and the appellant's conviction on the charge.

The appellant also appealed against the sentences. He was sentenced to imprisonment for ten years and to suffer twelve strokes of the cane. Under s 376(2) of the Penal Code, the minimum sentence is eight years and twelve strokes. In our opinion, the rape was premeditated and carefully planned, and the appellant knew exactly where to bring the complainant. She was injured and the rape was repeated. The fact that the complainant on this occasion may well have exposed herself to some danger by allowing herself to be chatted up, and to go off with two comparative strangers, was not a mitigating factor in the context of today's society. In our view, the sentences were clearly not excessive.

Appeal dismissed.

Solicitors: *JB Jeyaretnam & Co.*

Reported by *Mathavan Devadas*

Syed Yassin v Euvon Industries Pte Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 735 OF 1990
THEAN J
5 DECEMBER 1990

Landlord and Tenant — Ascertainment of rent — Tenant exercised right of renewal in tenancy agreement — Premises sold to another person — Whether new owner had cause of action against tenant arising from tenancy agreement — Whether tenant's appointment of valuers to determine market rent for renewal term valid — Whether any acceptance of tenant's payments by landlord's failure to reject cheques

The defendants were the tenants of premises owned by a company ('the company'). The company granted the defendants a tenancy of the premises for two years, and cl 4(3) of the tenancy agreement ('tenancy agreement') contained a provision for a renewal of the tenancy for a further two years.

The defendants gave written notice to the company in accordance with the tenancy agreement that they wanted a renewal of the tenancy agreement. As no agreement was reached as regards a new rent, the defendants then instructed Colliers Goh & Tan ('Colliers Tan') to give them a valuation of the market rent of the premises. Colliers Tan assessed the gross rental value of the premises to be $11,000 per month. On that basis, the defendants insisted that the monthly rental of the fresh tenancy should be $11,000 per month but this was disputed by the company. The defendants paid the company by cheque $11,000 per month for the fresh tenancy.

Subsequently, the company sold and transferred the premises the plaintiff. In the course of correspondence, the plaintiff stated that the valuation of Colliers Tan was not acceptable as the latter had not been furnished the full facts. The plaintiff suggested that Colliers Tan be instructed jointly by the plaintiff and the defendants to carry out a further valuation. The defendants refused. The plaintiff then took out this originating summons seeking, inter alia, that the defendants pay to the plaintiff the fair market rent of the premises as determined by Colliers Tan.

Held, allowing the plaintiff's application:

(1) Although the tenancy agreement was made between the defendants and the company, the plaintiff had a cause of action against the defendants. The defendants had duly exercised their right of renewal and the company was bound to grant the defendants a fresh tenancy. When the premises were transferred to the plaintiff, the plaintiff took it subject to the tenancy as the defendants were tenants in possession. Such a position was provided for by ss 10 and 11 of the Conveyancing and Law of Property Act. When the premises were transferred to the plaintiff, a fresh tenancy had come into existence by reason of the right of renewal having been exercised by the defendants pursuant to cl 4(3) and the only outstanding matter was the amount rent payable.

(2) Colliers Tan had not determined the prevailing market rate of the premises as provided by cl 4(3) of the tenancy agreement. The valuation given by Colliers Tan had been made purely on the instructions of the defendants and the defendants had failed to inform Colliers Tan of the purpose for which the valuation was required. Such an appointment was not one made in compliance with the provisions of cl 4(3) as that clause contemplated an appointment to be made by the landlord and the tenant jointly. In addition, the market rate applicable was that at the date of receipt by the company of the defendants' notice of renewal, and not the market rate prevailing at the date of the report.

(3) Although the defendants' solicitors had forwarded to the company's solicitors the cheques for payments of the rent for the fresh tenancy and the company did not reject these payments, there was no evidence that the company or the plaintiff had accepted such payments as both the company and the plaintiff had disputed the rent as determined by Colliers Tan.

Legislation referred to
Conveyancing and Law of Property Act (Cap 61, 1985 Ed) ss 10, 11

G Raman for the plaintiff.
Dara Singh s/o Karam Singh for the defendants.

Cur Adv Vult

Thean J: A company called The Glamourette Shops Pte Ltd ('the company') was the owner of the premises known as No 304 Orchard Road, #02-36, #02-37 and #02-38, Lucky Plaza, Singapore ('the said premises'). By a tenancy agreement dated 31 March 1988 ('tenancy agreement'), the company granted to Euvon Industries Pte Ltd, the abovementioned defendants, a tenancy of the said premises for a term of two years commencing from 1 April 1988. The tenancy agreement by cl 4(3) thereof contained a provision for renewal of the tenancy for a further term of two years, which is as follows:

> If the tenant shall be desirous of continuing the tenancy hereby created for a fresh term of two (2) years at the expiration of the said term and shall two (2) months before

the expiry of the said term give to the landlord notice in writing of such desire and if there shall not at the time of such notice and before the expiration of the said term by any existing breach or non-observance of any of the agreements on the tenant's part hereinbefore contained, then the landlord shall let the said premises to the tenant for a further term of two (2) years from the expiration of the term hereby granted on the same terms and conditions of this agreement with the perception of this clause; provided that the *rent for the fresh term will be the market rate prevailing at the time of receipt by the landlord of the tenant's notice in writing. In the event that the landlord and tenant are unable to agree as to what is the market rate prevailing the firm of M/s Colliers Goh & Tan shall be appointed to determine the same* and the fees payable to M/s Colliers Goh & Tan for work done shall be borne by the tenant. The determination of the market rate prevailing by M/s Colliers Goh & Tan shall be final. (Emphasis added.)

Pursuant to the said provision, the defendants on 20 December 1989 gave written notice to the company stating that in accordance with cl 4(3) of the tenancy agreement, they would 'like to renew the tenancy agreement of the abovementioned premises with effect from 1 April 1990, for a further period of three years preferably, instead of a further period of two years'. The suggested renewal for a term of three years was not agreeable to the company, and the defendants accepted the position of a renewal for a further term of two years. There were discussions between Choong Kian Haw, the director of the company, and Hans Phillips, the director of the defendants, with a view to agreeing on the rent for the renewed term. Unfortunately, no agreement was reached. On 28 February 1990, Hans Phillips instructed Colliers Jardine Goh & Tan Pte Ltd ('Colliers Tan') on the following terms:

(1) Please give us the current market rent for the above premises.
(2) Currently we are paying $55,000 inclusive of maintenance charges.
(3) The lease expires on 31 March 1990.
(4) Please also do a valuation of the current market price of the property as if we feel that the current market rent is too high we have intentions to purchase the property.
(5) Please embark on the valuation reports immediately as we require it very urgently.

On 12 March 1990, Colliers Tan assessed the 'gross rental value' of the said premises at $11,000 per month. On that basis the defendants insisted that the monthly rent of the said premises for the fresh term should be $11,000 per month. This was disputed by the company, and on 6 April 1990, the solicitors for the company wrote to Colliers Tan asking the latter to review the valuation undertaken by them on the ground that the purpose for the valuation was not made clear to them and that the valuation was requested by the defendants on an urgent basis. Colliers Tan appeared to be in agreement with the solicitors for the company; they wrote to the defendants on 25 April 1990, stating, inter alia, the following:

> We regret to note that at the time when you instructed us to undertake the valuation, you did not disclose to us that the valuation was to be made pursuant to s 4(3) of your tenancy agreement. We were informed of this only after our valuation report had been submitted to you, and even then it was M/s Piah, Tan & Partners.

No review was carried out by Colliers Tan, presumably because of the objection of the defendants. Nor was any agreement reached between the company and the defendants on the rent for the fresh term of the tenancy.

In the meanwhile, the company had on 8 March 1990 entered into an agreement to sell the said premises to the plaintiff, and on 17 May 1990, the said premises were transferred to him. Notice of the transfer was given to the defendants on or about the same day. There followed an exchange of correspondence between the solicitors for the plaintiff and the solicitors for the defendants. It is not necessary to refer to them in any detail; suffice it here to say that on 13 June 1990, the solicitors for the plaintiff wrote to the solicitors for the defendants stating that the valuation of the market rent of the said premises given by Colliers Tan on 12 March 1990 was not acceptable on the ground that the valuers had not been furnished with the full facts and they therefore proposed that Colliers Tan be instructed jointly by both the plaintiff and the defendants to carry out a valuation of the prevailing market rent of the said premises and that both of them be bound by the fresh valuation. The solicitors for the defendants, however, rejected this proposal and insisted that the market rent valued by Colliers Tan in March 1990 was the prevailing market rent.

On 30 June 1990, the plaintiff took out this originating summons seeking various reliefs. Before me, counsel for the plaintiff said that the only relief sought for was an order requiring the defendants to pay to the plaintiff a fair market rent of the said premises to be determined by Colliers Tan and the necessary consequential orders. At the conclusion of the hearing, I made the following orders:

(i) that the parties appoint Colliers Goh & Tan, now known as Colliers Jardine Goh & Tan Pte Ltd to determine the rent of the said premises for the fresh tenancy commencing from 1 April 1990 at the market rate prevailing at the date of the notice, that is, 20 December 1989;
(ii) that upon such determination the plaintiff grant and the defendants accept a lease of the said premises for a term of two years commencing from 1 April 1990 at the rent so determined and in all other respects on the terms and conditions as contained in the tenancy agreement;
(iii) that the defendants pay one-half of the costs of the proceedings.

I now give my reasons.

Against the claim of the plaintiff, counsel for the defendants submitted that the plaintiff had no cause of action against the defendants on the ground that the tenancy agreement was made between the company and the defendants to which the plaintiff was not a party, and there was no privity of contract between the plaintiff and the defendants. Accordingly, the plaintiff cannot initiate and maintain these proceedings against the defendants. This argument, in my opinion, has no substance and I rejected it. It is true that the tenancy agreement was made between the company and the defendants and that the plaintiff was not a party to it. However, at the time when the plaintiff purchased the said premises, ie 8 March 1990, the defendants were tenants of the said premises in possession, holding the same under the tenancy agreement. Under cl 4(3) of the tenancy agreement, the defendants had a right of renewal of the tenancy for a further term of two years, and, in accordance with the said clause, had duly exercised the right of renewal. The company thereupon was bound to grant to the defendants a fresh tenancy for a further term of two years at a rent to be determined by Colliers Tan in accordance with cl 4(3). That was not disputed by any party. The fresh tenancy of the said premises commenced from 1 April 1990 and the only thing to be determined at that time was the rental of the said premises. Hence, as at the date when the said premises were transferred to the plaintiff, he took it subject to that tenancy.

Such a position is fully provided in ss 10 and 11 of the Conveyancing and Law of Property Act (Cap 61, 1985 Ed) which so far as relevant, provide as follows:

> 10(1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.
>
> 11(1) The obligation of a covenant entered into by a lessor with reference to the subject-matter of a lease shall, if and so far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and so far as the lessor has power to bind the person from time to time entitled to that reversionary estate, that obligation may be taken advantage of and enforced against any person so entitled.

It is abundantly clear that cl 4(3) of the tenancy agreement is *a covenant or provision having reference* to the said premises and therefore under s 10(1) it is annexed and is incident to and goes with the reversionary estate in the said premises immediately expectant on the term granted by the tenancy agreement. The plaintiff is clearly bound by that clause; so also are the defendants. While the said premises were transferred to the plaintiff in May 1990, the new or fresh tenancy had already come into existence by reason of the right of renewal having been duly exercised by the defendants pursuant to cl 4(3). The only outstanding matter in respect of that tenancy is the amount of rent of the said premises, and that, under cl 4(3), is to be determined by Colliers Tan. The only question therefore is whether Colliers Tan had so determined the rent of the said premises by their report of 12 March 1990 given to the defendants.

To that question I now turn. The valuation of the prevailing market rent as determined by Colliers Tan in their report of 12 March 1990 was given purely on the instruction of the defendants. Though the instruction contained information as to the current rent then paid by the defendants, they did not inform Colliers Tan the purpose for which the valuation was required, the terms of the tenancy agreement and the precise date of the true market value in accordance with cl 4(3): see the letter dated 28 February 1990 from the defendants to Colliers Tan, which I have earlier set out. That was an appointment made unilaterally by the defendants without any consultation with the company at all. In my view, such an appointment was not one made in compliance with the provisions of cl 4(3). That clause contemplates joint appointment being made by the landlord and the tenant. Further, the market rent prevailing was at the date of receipt by the company of the defendants' notice (which in this case I took as the date of the notice, as it was not clear to me when the company actually received the notice), and not the market rent prevailing at the time of the report, ie 12 March 1990. In my judgment, Colliers Tan have not determined the prevailing market rent as provided in cl 4(3) of the tenancy agreement.

I now come to the second argument advanced on behalf of the defendants. It was submitted that the prayer or claim asked for by the plaintiff in the originating summons was not the kind of relief that could be granted. It is sufficient to understand the basis for such a technical objection. It is true that the claim sought by the plaintiff was not very precisely formulated, but that is not fatal; and the order I made is not strictly in accordance with the claim, but would be sufficient, in my judgment, to give effect to the terms of the provisions of cl 4(3).

There is one last point raised on behalf of the defendants. The defendants' solicitors by their letter of 12

May 1990 forwarded to the solicitors for the company cheques for payment of the rent for April and May 1990 at the rate of $11,000 per month and also the additional deposit to be held by the company under the new or fresh tenancy. The company did not appear to have rejected these payments. It was submitted by counsel for the defendants that the company had accepted these payments; that thereafter there was no dispute on the amount of rent payable, and that the plaintiff as the successor in title of the company was bound by such acceptance. But there was no evidence that the company or the plaintiff had accepted such payments. At or about the time the company clearly disputed that the rent had been properly determined by Colliers Tan under cl 4(3) and had not accepted the determination. Subsequently, the solicitors for the plaintiff in their letter of 13 June 1990 clearly indicated that the rent to be determined by Colliers Tan was not acceptable. This argument of counsel, again, has no merit and must fail.

On the question of costs, I was not disposed to give to the plaintiff the entire costs. He had in the originating summons sought various reliefs, which he subsequently abandoned. One half of the costs in the circumstances would be justified, and I so ordered.

Application allowed.

Solicitors: *G Raman & Partners; Madhavan Louis & Partners.*

Reported by *Teoh Ai Lin*

Management Corporation of Grange Heights — Strata Title No 301 v Lee Tat Development Pte Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 404 OF 1989
COOMARASWAMY J
5 DECEMBER 1990

Land Law — Right of way over servient tenement — Interference of enjoyment — Whether owners of dominant tenement entitled to do so — Whether amalgamation of two lots extinguishes right

The plaintiffs are the management corporation of the land and premises known as Grange Heights erected on the land known as lot 687 of Town Subdivision XXI. Lot 687 is an amalgamation of two separate lots, namely, lot 111-33 and lot 561. The defendants are the owners of lot 111-32 and 111-33. Adjoining these lots is lot 111-31 ('the servient tenement'), a private road providing access to these lots from Grange Road. Over the servient tenement is a right of way vested by grants to the plaintiffs and the defendants. The residents of Grange Heights have since 1976 been using the servient tenement as a footpath for gaining access to and from Grange Road.

On 25 April 1989, the defendants caused to be erected an iron gate across the Grange Road end of the servient tenement and a fence across the Grange Heights end thereof, thus closing the right of way and preventing or interfering with the residents' use of the servient tenement for gaining access to and from Grange Road. The plaintiffs instituted proceedings against the defendants and obtained an interim injunction. The defendants applied for the injunction to be withdrawn.

Held, dismissing the defendants' application:

(1) The plaintiffs' right of way is derived from or based on the right of way given to them as owners of lot 111-34. That lot number has been extinguished and the parcel of land has become and is a part of larger parcel of land known as lot 687. However, the land is still there and the right of way which runs with the land remains intact. The amalgamation of lots 111-34 and 561 into one lot is only for the purposes of survey and issue of documents of title. It does not destroy or extinguish the right of way which runs with the land and enures to the benefit of the owners for the time being of the land. Accordingly, the plaintiffs as owners of the land still have the right of way over the servient tenement, and the defendants in erecting the gate and the fence have interfered with the plaintiffs' right of way.

(2) The defendants are not the owners of the servient tenement but enjoy a right of way over it. They are entitled to take necessary steps to protect their right of way and have recourse to legal remedy against any interference of their enjoyment of that right. However, they are not entitled to erect the gate and fence as they did and close the right of way, which they have in common with others. They have not shown that they are entitled to do so.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 131 of 1990.]

Cases referred to

1 *Collin Development (Pte) Ltd* v *Hong Leong Holdings Ltd* [1976] 1 MLJ 164; [1976] 2 MLJ 149 (refd)
2 *Pickwick International Inc (GB) Ltd* v *Multiple Sound Distributors Ltd* [1972] 3 All ER 384 (refd)

Raj Singham (*Ong Chee Kuan* with him) for the plaintiffs.
Jimmy Yap (*Charles Lin* with him) for the defendants.

Cur Adv Vult

Coomaraswamy J: The plaintiffs are the management corporation of the land and premises known as Grange Heights which consist of three blocks of high-rise apartments, swimming pool, changing room, tennis court and garden, all of which are erected on the land known as lot 687 of Town Subdivision XXI. Lot 687 is an amalgamation of two separate lots, namely, lot 11-34 and lot 561. Roughly, on lot 111-34 stand the tennis court and the changing room, and on lot 561 stand the three blocks of apartments and the swimming pool.

The defendants are the owners of lot 111-33 of Town Subdivision XXI, which adjoins lot 111-34; the defendants are also owners of lot 111-32 which is next to lot 111-33 and abuts Grange Road. Adjoining these lots, namely, 111-34, 111-33 and 111-32, is lot 111-31 which is a long, narrow but irregular strip of land leading to Grange Road; it is, in effect, a private road providing access to these lots from Grange Road. Over